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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DANIEL U. ACEDO,

12 Plaintiff,

13 v.

14 ERNEST PINEDO, police officer, et al.,

15 Defendants.
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Case No. 14cv903-JAH (MDD)

**ORDER DENYING DEFENDANT'S
MOTION FOR ATTORNEY'S FEES
(Doc. No. 216)**

17 **INTRODUCTION**

18 Pending before the Court is Defendant Ernesto Pinedo's ("Defendant") motion for
19 attorney's fees ("Motion") pursuant to 42 U.S.C. § 1988(b). See Doc. No. 216. Plaintiff
20 Daniel U. Acedo ("Plaintiff") filed a response in opposition. See Doc. No. 222. The
21 Motion is fully briefed. After careful consideration of the pleadings filed by both parties,
22 and for the reasons set forth below, the Motion (Doc. No. 216) is **DENIED**.

23 **BACKGROUND¹**

24 On March 9, 2017, the Court issued an Order overruling Plaintiff's objections (Doc.
25 No. 206); adopting the Magistrate Judge's Report (Doc. No. 197); granting Defendants'
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28 ¹ The Court addressed the case's prior factual and procedural history in its Order granting Defendants'
motion for summary judgment. See Doc. No. 214.

1 motion for summary judgment (Doc. No. 116); and denying Plaintiff's related evidentiary
2 motions (Doc. Nos. 147, 149, 151). On March 30, 2017, Defendant filed a motion to be
3 determined prevailing party and an award of attorney's fees pursuant to 42 U.S.C. 1988(b).
4 See Doc. No. 216. Plaintiff filed a response in opposition on April 12, 2017. See Doc. No.
5 222.

6 **DISCUSSION**

7 **I. Legal Standard**

8 This Court has discretion to award attorney's fees in § 1983 cases pursuant to 42
9 U.S.C. 1988(b). See 42 U.S.C. 1988(b). Attorney's fees are appropriate when the action
10 is considered "unreasonable, frivolous, meritless, or vexatious." Vernon v. City of Los
11 Angeles, 27 F.3d 1385, 1402 (9th Cir. 1994).

12 **II. Analysis**

13 Defendant argues that Plaintiff's action against Defendant is frivolous because
14 Defendant "had nothing to do" with Plaintiff. Doc. No. 216-1 at pg. 11. Defendant asserts
15 that he did not arrest or search Plaintiff. Id. Defendant claims that he did not have an
16 exchange of words with Plaintiff and never made physical contact with Plaintiff. Id.
17 Defendant asks for \$20,738.50 in attorneys' fees. Id. at pg. 12.

18 In response, Plaintiff argues that Defendant's entry and reentry of 799 Ada St. was
19 unreasonable. Doc. No. 222 at pg. 4. Plaintiff asserts that this reentry and secondary search
20 violated Plaintiff's rights under the Fourth Amendment. Id. at pg. 1. Plaintiff contends
21 that there was "prospect of success" in his complaint. Id. at pg. 5. Plaintiff argues here, it
22 would be unreasonable to declare his complaint "frivolous". Id. at pg. 4. Plaintiff argues
23 there is a strict standard for attorney's fees, and such fees should only be awarded in
24 exceptional cases. Id. at pg. 5. Plaintiff argues that this situation does not constitute an
25 exceptional case to warrant attorney's fees. Id. at pgs. 4-8.

26 The Court agrees. The Ninth Circuit has determined that attorneys' fees in §1983
27 cases are only appropriate when the Plaintiff's action is frivolous, unreasonable, or without
28 foundation. Vernon, 27 F.3d at 1402. Further, the Ninth Circuit has defined 'frivolous' as

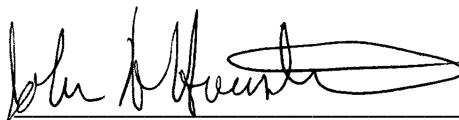
1 “when the result is obvious” or “wholly without merit.” Id. (citing McConnell v.
2 Critchlow, 661 F.2d 116, 118 (9th Cir. 1981)). The Court has previously ruled that
3 Defendants, police officers, had probable cause to arrest and search Plaintiff because
4 Defendants had reasonable grounds to believe that Plaintiff stabbed Ms. Chacon at a trolley
5 station. Doc. No. 214 at pgs. 8-10. Although Defendant did not participate in the initial
6 arrest, he was later present at the scene of the arrest and conducted a secondary search.
7 Doc. No. 216-1 at pg. 9; Doc. No. 222 at pg. 1. In addition, this Court’s finding made
8 Plaintiff’s objections to the Magistrate Judge’s Report & Recommendation moot. Id.
9 However, the Court does not find that Plaintiff’s complaint was unreasonable or without
10 foundation. Plaintiff is pro se and warrantless search did occur. Plaintiff had reason to
11 suspect that his rights under the Fourth Amendment were in jeopardy. Thus, the Court
12 finds that Plaintiff’s complaint was not “wholly without merit.” See Vernon, 27 F.3d at
13 1402.

14 CONCLUSION

15 Based on the foregoing reasons, Defendant’s Motion for Attorney’s Fees (Doc. No.
16 216) is **DENIED**.

17 **IT IS SO ORDERED.**

18 DATED: April 1, 2019

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21 JOHN A. HOUSTON
22 United States District Judge
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